

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CLIFFORD R. RAYBURN,

Plaintiff,

vs.

DANNY POTTER, UNITED STATES
MARSHALS, ET AL, OMAHA POLICE
DETECTIVE, (last name unknown); ANDY,
Sarpy County Deputy (last name unknown);
UNNAMED US MARSHAL DEPUTIES
PRESENT, and UNNAMED DOUGLAS
COUNTY SHERIFF DEPUTIES,

Defendants.

8:23CV310

MEMORANDUM AND ORDER

On October 17, 2023, after initial review of Plaintiff's Amended Complaint, [Filing No. 6](#), the Court determined that Plaintiff had stated plausible Fourth Amendment claims against Defendants Danny Potter, the "Unnamed US Marshal Deputies Present," and Sarpy County Deputy "Andy (last name unknown)," and the Court gave Plaintiff 30 days in which to take reasonable steps to provide the names or other additional identifying information for the Unnamed US Marshal Deputies Present and Sarpy County Deputy "Andy" and notify the Court of their names, after which the Court will initiate service of process. [Filing No. 10 at 20–22](#). The Court warned Plaintiff that "[f]ailure to take any action will result in dismissal of Plaintiff's claims against the Unnamed US Marshal Deputies Present and Sarpy County Deputy 'Andy (last name unknown)' without prejudice and without further notice." [Id. at 22](#).

To date, Plaintiff has not notified the Court with the names or other identifying information for the Unnamed US Marshal Deputies Present and Sarpy County Deputy

“Andy” or taken any other action in this matter. Accordingly, the Court will dismiss Plaintiff’s claims against these defendants, and this matter will proceed to service of process against Defendant Potter only.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s claims against the Unnamed US Marshal Deputies Present and Sarpy County Deputy “Andy” in their individual capacities are dismissed without prejudice because Plaintiff failed to provide sufficient identifying information for these defendants as directed by the Court in its October 17, 2023 Memorandum and Order.

2. This matter will proceed to service of process against Defendant Danny Potter in his individual capacity.

3. For service of process on Defendant Danny Potter, a Deputy U.S. Marshal, in his individual capacity, the Clerk of Court is directed to complete a summons form and a USM-285 form for Defendant using an address obtained from the U.S. Marshals Service for such deputy. The Clerk of Court shall then forward the summons and USM-285 form together with a copy of the Amended Complaint, [Filing No. 6](#), a copy of the Court’s October 17, 2023 Memorandum and Order on initial review, [Filing No. 10](#), and a copy of this Memorandum and Order to the Marshals Service. The Marshals Service shall serve Deputy U.S. Marshal Danny Potter personally in his individual capacity at the address identified by the U.S. Marshal.¹ Service may also be accomplished by using any of the following methods: residence, certified mail, or

¹ Pro se litigants proceeding in forma pauperis are entitled to rely on service by the United States Marshals Service. [Wright v. First Student, Inc.](#), 710 F.3d 782, 783 (8th Cir. 2013). Pursuant to 28 U.S.C. § 1915(d), in an in forma pauperis case, “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases.” See [Moore v. Jackson](#), 123 F.3d 1082, 1085 (8th Cir. 1997) (language in § 1915(d) is compulsory).

designated delivery service. See [Federal Rule of Civil Procedure 4\(e\)](#); [Neb. Rev. Stat. § 25-508.01](#).

4. The United States Marshal shall serve all process in this case without prepayment of fees from Plaintiff.

5. [Federal Rule of Civil Procedure 4\(m\)](#) requires service of the complaint on a defendant within 90 days of filing the complaint. However, Plaintiff is granted, on the Court's own motion, an extension of time until 90 days from the date of this order to complete service of process.

6. The Clerk of Court is directed to set a case management deadline using the following text: **March 4, 2024**: deadline for service of process.

7. The Clerk of Court is further directed to terminate the following defendants as parties to this action: "United States Marshals, et al," "Omaha Police Detective (last name unknown)," "Andy, Sarpy County Deputy (last name unknown)," "Unnamed US Marshal Deputies Present," and "Unnamed Douglas County Sheriff Deputies."

8. Because this non-prisoner case is proceeding to service of process, and at the direction of the Court, this case is removed from the pro se docket. The Clerk's office shall randomly assign new judges to this case and request a reassignment order from the Chief Judge.

Dated this 4th day of December, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", written over a horizontal line.

Joseph F. Bataillon
Senior United States District Judge